



A BILL FOR AN ORDINANCE

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TO REZONE LAND SITUATED AT WAIMALU, OAHU, HAWAII (AMENDING PORTION OF ZONING MAP NO. 7).

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Land situated at Waimalu, Oahu, Hawaii, hereinafter described, is hereby rezoned from I-2 Intensive Industrial District with a 60-foot height limit to IMX-1 Industrial-Commercial Mixed Use District with a 60-foot height limit. The boundaries and area of said IMX-1 Industrial-Commercial Mixed Use District shall be described as shown on the map attached hereto, marked Exhibit "A" and made a part hereof, and further identified as Tax Map Key: 9-8-009: 0011.

SECTION 2. A Unilateral Agreement marked Exhibit "B" is by reference incorporated herein and made a part hereof.



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Donovan Dela Cruz (BR)  
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DATE OF INTRODUCTION:

November 26, 2003  
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Ketaoka  
Deputy Corporation Counsel

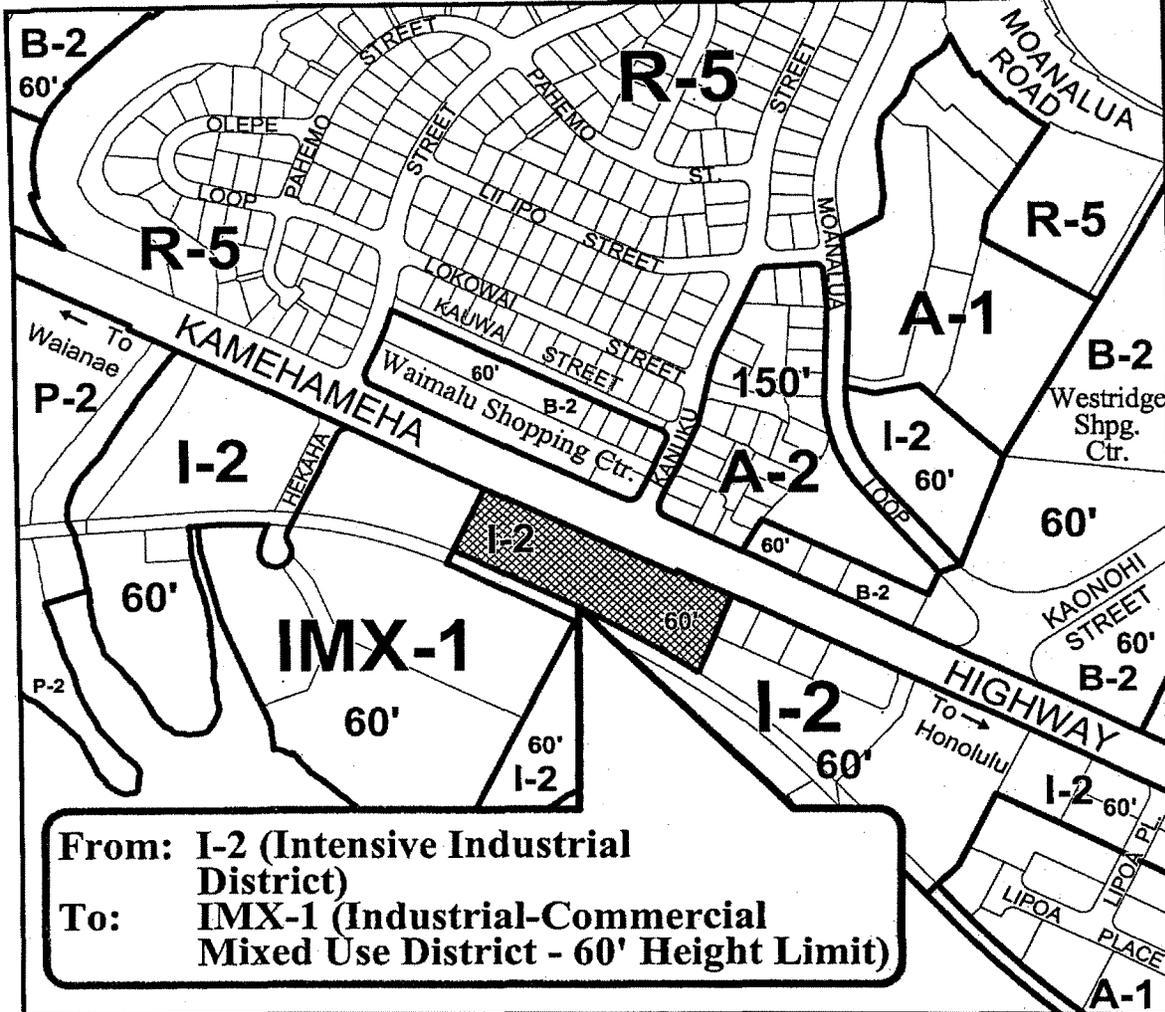
Dis APPROVED this 27th day of February, 2004.

[Signature]  
JEREMY HARRIS, Mayor  
City and County of Honolulu

(OCS/012704/ct)

04-04

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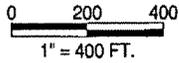
**From: I-2 (Intensive Industrial District)**  
**To: IMX-1 (Industrial-Commercial Mixed Use District - 60' Height Limit)**



**PORTION OF ZONING MAP NO. 7 (HALAWA - PEARL CITY)**

Land situated along the makai side of Kamehameha Highway where Kanuku Street meets Kamehameha Highway and across from the Waimalu Shopping Center

**APPLICANT:** BEST BUY PURCHASING, LLC  
**TAX MAP KEY(S):** 9-8-09: 11  
**FOLDER NO.:** 2003/Z-6  
**LAND AREA:** 3.278 Acres  
**PREPARED BY:** DEPARTMENT OF PLANNING & PERMITTING CITY AND COUNTY OF HONOLULU  
**PUBLIC HEARING:** PLANNING COMMISSION CITY COUNCIL



**ORD. NO.** 04-04  
**EFF. DATE:** 3/24/04  
**EXHIBIT A**  
**BILL 73 (2003), CD1**

04-04

<p>LAND COURT</p>	<p>I hereby certify that this is a true copy from the records of the Bureau of Conveyances, as <u>2004-021786</u>.</p> <p><i>M. Puga</i>      Registrar of Conveyances      Assistant Registrar, Land Court      State of Hawaii</p> <p style="text-align: right;">FEB 10 2004</p> <p style="text-align: center;">REGULAR SYSTEM</p>
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After recordation, return by mail (x) pick up ( ) to:

Kusao & Kurahashi, Inc.  
2752 Woodlawn Drive, Suite 5-202  
Honolulu, Hawaii 96822

Title of Document:

Unilateral Agreement And Declaration For Conditional Zoning

Party To Document:

Healani Land Company, Inc.

**Declarant**

Property Description:

THAT certain parcel of land situated at Waimalu, Ewa, City and County of Honolulu, State of Hawaii, being portions of the lands described in and covered by the Royal Patent Number 4497, Land Commission Award Number 8559, Apana 1 to C. Kanaina, and Royal Patent Number 453, Land Commission Award Number 5956, Apana 2 to Makaike, being LOT 1; described as Tax Map Key: 9-



8-9: 11; and more particularly described in Exhibit A.

**UNILATERAL AGREEMENT & DECLARATION  
FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 6th day of February, 2004, by Healani Land Company, Inc., a Hawaii corporation, whose business address is P.O. Box 17658, Honolulu, Hawaii 96817(hereinafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner in fee simple of all of that certain parcel of land situated at Waimalu, Ewa, City and County of Honolulu, State of Hawaii, being portions of the lands described in and covered by the Royal Patent Number 4497, Land Commission Award Number 8559, Apana 1 to C. Kanaina, and Royal Patent Number 453, Land Commission Award Number 5956, Apana 2 to Makaike, being LOT 1; described as Tax Map Key: 9-8-9: 11; and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, Declarant plans to develop a commercial development on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City & County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from I-2 Intensive Industrial District with a 60-foot height limit to IMX-1 Industrial-Commercial Mixed Use District with a 60-foot height limit; and

WHEREAS, a public hearing regarding the change in zoning, Bill 73 (2003), was held by the Council on January 28, 2004; and

WHEREAS, the Council recommended by its Zoning Committee Report

No. 37 that the said change in zoning be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW, THEREFORE, Declarant hereby covenants and declares as follows:

1. Declarant shall provide setbacks and landscaping on the Kamehameha Highway frontage and along the Pearl Harbor Historic Trail as follows:

- a. A 10-foot setback (provided that architectural embellishments may encroach a maximum of one foot into the setback) along Kamehameha Highway fronting the main Project structure, extending to 35 feet at the access easement extending from Kanuku Street and continuing along the area fronting the deck parking structure except for the up ramp. All setback areas shall be landscaped.
- b. In the area adjacent to the Pearl Harbor Historic Trail, (the "Trail"), include "eye-level" landscape screening (install plant material with a minimum height of 6 feet that will mature to 12 to 15 feet) on the Trail and in selected areas along the Project, along the lower level parking, including screening for the loading dock and compacting unit. Landscaping along the Trail (in the Trail right-of-way) will be subject to the approval of the Department of Planning and Permitting and the Navy with input from the community.
- c. In the area behind (south) the deck parking structure and east of the access easement extending from Kanuku Street, provide a 30-foot wide landscaped area with picnic tables, benches, a drinking fountain and a bike rack for use by the public and customers of the Project.
- d. Plans for all landscaping shall be submitted with the Declarant's building permit application for the Project and the landscaping approved by the Department of Planning and Permitting shall be installed prior to receipt of the Certificate of Occupancy for the Project, with the exception of the

landscaping on the Trail, which shall be installed within 60 days of approval by the Navy. All landscaping, and all improvements noted in item "c" above, shall be installed and maintained by Declarant at Declarant's cost.

2. Prior to receipt of a Certificate of Occupancy for the Project, the Declarant shall provide a public access easement to the Trail from Kamehameha Highway along the access drive extending from the Kanuku Street/Kamehameha Highway intersection. The easement document shall be satisfactory in form and content to the Department of Planning and Permitting and the Corporation Counsel, and shall be duly recorded in the Bureau of Conveyances and/or the Office of the Assistant Registrar of the Land Court, as is appropriate. The easement shall be subject to relocation to another location on the Land if the Land is redeveloped.

3. Building height along Kamehameha Highway shall not exceed 40 feet from the average elevation of Kamehameha Highway along the length of the Land, provided that architectural details and embellishments and elevators and other rooftop equipment shall not exceed 55 feet.

4. Prior to receipt of a Certificate of Occupancy for the Project, Declarant shall fund and install the roadway improvements recommended in the traffic study prepared by Austin, Tsutsumi & Associates, Inc. dated September 30, 2002, or any updated traffic study, subject to the State Department of Transportation (DOT) approval.

5. Prior to receipt of a Certificate of Occupancy for the Project, Declarant shall install signage and driveway entry stop lines on Kanuku Street to avoid blocking of the Kamehameha Highway intersection, subject to approval by the City Department of Transportation Service, (DTS) and if necessary, DOT.

6. On an annual basis, Declarant shall submit a written status report to the Department of Planning and Permitting (DPP) documenting their satisfaction of and/or describing their progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.

7. Declarant acknowledges that approval of this zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

8. In the event of noncompliance with any of the conditions set forth herein, the Director of the DPP shall inform the Council and may initiate action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the Project until applicable conditions are met.

9. Failure to fulfill any conditions to the zone change may be grounds for revocation of the permits issued under this zoning and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, Declarant hereby makes the following additional Declarations:

For purposes of this document, any references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

The development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu or the State of Hawaii shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

DECLARANT:

Healani Land Company, Inc.

By   
Its Pres

State of Hawaii )  
 ) ss.  
City and County of Honolulu )

On this 6<sup>th</sup> day of February 2004, before me appeared Howard K.O. Chong to me personally known, who, being by me duly sworn, did say that he is an officer of the Healani Land Company, Inc., a Hawaii Corporation, registered in the State of Hawaii; that the foregoing instrument was signed in behalf of said corporation; and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii Karen K.O. Fujii  
My commission expires: 3/18/05  
Karen K.O. Fujii

## EXHIBIT A

That certain parcel of land situate, lying and being on the southwesterly side of Kamehameha Highway at Waimalu, Ewa, City and County of Honolulu, State of Hawaii, being portions of the lands described in and covered by Royal Patent Number 4497, Land Commission Award Number 8559, Apana 1 to C. Kanaina, and Royal Patent Number 453, Land Commission Award Number 5956, Apana 2 to Makaie, being LOT 1, being more particularly bounded and described as set forth in that certain Survey dated March 22, 1983, of Harry S. H. Au, Registered Professional Surveyor, and being more particularly described as follows:

Beginning at the northeast corner of this parcel of land, being also the northerly corner of Lot 1 of Land Court Application 1796, the coordinates of which referred to Government Survey Triangulation Station "SALT LAKE" being 7,549.13 feet north and 13,596.55 feet west and running by azimuths measured clockwise from true South:

1. 22° 36' 231.98 feet along Lots 1 and 5 of Land Court Application 1796;

Thence along former 40-foot Railroad Right-of-Way, on a curve to the left with a radius of 2,885.00 feet, the chord azimuth and distance being:

2. 120° 16' 402.50 feet;

3. 116° 16' 236.00 feet along former 40-foot Railroad Right-of-Way;

Thence along former 40-foot Railroad Right-of-Way, on a curve to the left with a radius of 1,451.86 feet, the chord azimuth and distance being:

4. 114° 32' 58" 87.04 feet;

5. 205° 57' 30" 192.22 feet along remainders of Royal Patent 4497, Land Commission Award 8559, Apana 1 to C. Kanaina and Royal Patent 453, Land Commission Award 5956, Apana 2 to Makaie;

6. 295° 57' 30" 551.21 feet along the southwesterly side of Kamehameha Highway;

7. 205° 57' 30" 10.00 feet along the southwesterly side of Kamehameha Highway;

8. 295° 57' 30" 159.54 feet along the southwesterly side of Kamehameha Highway to the point of beginning and containing an area of 3.278 acres, more or less.

Together with perpetual easements for roads and sewer and water pipe lines in Easement "2" upon and subject to all the terms and conditions set forth in Grants of Easement dated May 4, 1960, recorded in the Bureau of Conveyances, State of Hawaii, in Book 3907, Pages 20 and 32.

Together, also with perpetual easements for road, power and communication lines and water and sewer pipe lines over, across, through and under Easement "B", upon and subject to all the terms and conditions set forth in Grants of Easement dated August 2, 1961, recorded in said Bureau, in Book 4106, Pages 117, 124 and 131, as amended by instruments dated July 8, 1966 and October 17, 1983, recorded in Bureau, in Book 5402, Page 58, and Book 17395, Page 658.

The above Easement "B" being also for the right to construct, install, maintain, operate, repair and replace an overhead case conveyor, subject to the terms and conditions set forth in Grant of Easement dated August 7, 1967, recorded in said Bureau, in Book 5757, Page 248, for a period of 20 years from August 7, 1967.

Together, also, with, for a period ending August 7, 1987; "an easement for the construction, installation, maintenance, operation, repair and replacement of overhead pipelines for the transportation of boiler fuel oil, tracer, steam, waste filter media material, liquid malt, carbon dioxide, and compressed air over and across Easement "C" and Easement "D" and being subject to the terms and conditions set forth in Grant of Easement dated April 11, 1969, recorded in said Bureau, in Book 6479, Page 294.

Together, also, with, for a period of 20 years from April 5, 1973, an easement for road purposes extending through, across and over Parcels 1 and 2, subject to existing easement and to the terms and conditions set forth in Grant of Easement dated April 5, 1973, recorded in said Bureau, in Book 9089, Page 284.

Together, also, with an easement for overhead case conveyor purposes, across the Facility described as Easement "B", as granted by instrument dated March 28, 1988, recorded in said Bureau, in Book 21961, Page 81.

Being the land conveyed to Healani Land Company, Inc., a Hawaii corporation, by Deed dated March 20, 1990, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 90-039472.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

ORDINANCE 04-04

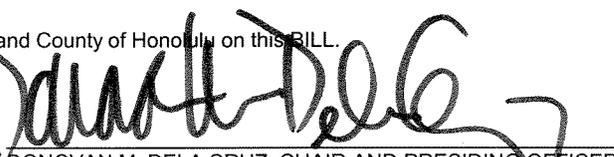
BILL 73 (2003)

INTRODUCTION DATE: NOVEMBER 26, 2003				
INTRODUCED BY: CHAIR DONOVAN DELA CRUZ (BY REQUEST)				
<b>1ST READING</b> DATE: 12/3/03 REMARKS: Kobayashi/Cachola – Bill passed 1st reading and referred to Zoning. – 8. Exc: Cachola. – 1.		AYE	NO	A/E
	CACHOLA			E
	DELA CRUZ	X		
	DJOU	X		
	GABBARD	X		
	GARCIA	X		
	KOBAYASHI	X		
	MARSHALL	X		
	OKINO	X		
	TAM	X		
TOTAL	8	0	1	
<b>2ND READING</b> DATE: 1/28/04 DRAFT: COMMITTEE REPORT: ZCR-9 PUBLIC HEARING DATE: 1/28/04 REMARKS: Djou/Tam - Bill passed 2nd reading. - 9. Public hearing held concurrently, closed and referred to Zoning.		AYE	NO	A/E
	CACHOLA	X		
	DELA CRUZ	X		
	DJOU	X		
	GABBARD	X		
	GARCIA	X		
	KOBAYASHI	X		
	MARSHALL	X		
	OKINO	X		
	TAM	X		
TOTAL	9	0	0	
<b>3RD READING</b> DATE: 2/18/04 DRAFT: CD1 COMMITTEE REPORT: ZCR-37 REMARKS: Djou/Tam – Bill passed 3rd reading, as amended. – 9.		AYE	NO	A/E
	CACHOLA	X		
	DELA CRUZ	X		
	DJOU	X		
	GABBARD	X		
	GARCIA	X		
	KOBAYASHI	X		
	MARSHALL	X		
	OKINO	X		
	TAM	X		
TOTAL	9	0	0	

Referred to: D-1108-03; D-120-04  
Reference: ZONING

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
DENISE C. DE COSTA, CITY CLERK

  
DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER

04-04

ORDINANCE NO. 04-04

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

CERTIFICATE

I hereby certify that Bill 73 (2003), CD1, returned vetoed by the Honorable Jeremy Harris, Mayor of the City and County of Honolulu, on March 1, 2004, was taken up by the Council for reconsideration on March 24, 2004; and, at the same meeting, APPROVED by the said Council, the veto of the Mayor to the contrary notwithstanding by the following vote:

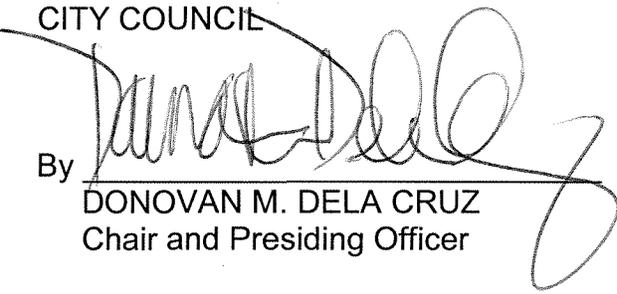
AYES: Councilmembers Cachola, Djou, Gabbard, Garcia,  
Kobayashi, Marshall, Okino, Tam, Dela Cruz. – 9.

NOES: None.

Further, pursuant to Section 3-203 of the Revised Charter of Honolulu and the foregoing action by the said Council, Bill 73 (2003), CD1, is duly enacted an Ordinance by this certification.

Dated, Honolulu, State of Hawaii, this 24th day of March, 2004.

CITY COUNCIL

By 

DONOVAN M. DELA CRUZ  
Chair and Presiding Officer

ATTEST:



DENISE C. DE COSTA  
City Clerk

04-04